

DECISION AND ORDER

Decision Issue Date Tuesday, June 05, 2018

PROCEEDING COMMENCED UNDER section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): KUNAL ADHIKARI

Applicant: SEAN GALBRAITH

Property Address/Description: 821 CARLAW AVE

Committee of Adjustment Case File Number: 17 194352 STE 29 MV

TLAB Case File Number: **17 267941 S45 29 TLAB**

Hearing date: Thursday, May 03, 2018

DECISION DELIVERED BY L. McPherson

APPEARANCES

Name	Role	Representative
Kunal Adhikari	Appellant/Owner	Amber Stewart
City of Toronto	Party	Matthew Schuman
Argyro Panagiotopoulos	Party	
Angeliki Frimis	Party	George Frimis
David McKay	Expert Witness	
Heather Deveber	Participant	

INTRODUCTION

This is an appeal to the Toronto Local Appeal Body (the TLAB) by the Applicant of the decision of the Committee of Adjustment (Committee) for the City of Toronto (City) to refuse minor variances to legalize and maintain the "as constructed" one-storey

addition, converted front porch, and converted attic into living space and a third dwelling unit within the existing 2 1/2- storey detached dwelling (the subject property).

The subject property is located on the east side of Carlaw Avenue between Danforth Ave and Cruikshank Ave, west of Pape Ave. The subject property is designated Neighbourhoods in the City of Toronto Official Plan (Official Plan) and zoned R under Zoning By-law No. 569-2013 (new City By-law) and R2 under former City of Toronto By-law 438-86 (former By-law).

BACKGROUND

On November 8, 2017, the Committee of Adjustment refused the following variances:

By-law 569-2013

1. Chapter 10.10.40.30. (1)(A),

The maximum permitted building depth for a detached dwelling is 17.0 m.

The altered dwelling will have a depth of 19.93 m.

2. Chapter 10.10.40.40. (1)(A), By-law 569-2013

The maximum permitted floor space index is 0.6 times the area of the lot (182.92 m²).

The altered dwelling will have a floor space index of 0.81 times the area of the lot (246.9 m²).

3. Chapter 10.10.40.70. (1),

The minimum required front yard setback is 4.66 m.

The altered dwelling will be located 2.65 m from the front lot line.

4. Chapter 10.10.40.70. (3)(A)(i),

The minimum required side yard setback for a detached dwelling is 0.9 m

The altered dwelling will be located 0.48 m from the north side lot line.

5. Chapter 10.5.50.10. (3)(A),

A minimum of 50% (58.86 m²) of the rear yard shall be maintained as soft landscaping.

In this case, 48.4% (56.93 m²) of the rear yard will be maintained as soft landscaping.

By-law 438-86

1. Section 6(3) Part I 1,

The maximum permitted gross floor area is 0.6 times the area of the lot (182.92 m²).

The altered dwelling will have a residential gross floor area equal to 0.81 times the area of the lot (246.9 m²).

2. Section 6(3) Part II 2(II),

The minimum required front yard setback of a building on an inside lot is 4.66 m.

The altered dwelling will be located 2.65 m from the front lot line.

3. Section 6(3) Part II 5(I),

The maximum permitted depth of a house is 14.0 m.

The altered dwelling will have a depth of 21.95 m.

4. Section 6(2) 1. (iii)(a),

A converted house is permitted, provided there is no exterior alteration of or addition to the front wall.

In this case, there will be an addition to the front wall of the converted house.

5. Section 6(3) Part II 3.F (I)(2),

The minimum required side lot line setback where the side wall contains openings is 1.2m.

The altered dwelling will be located 0.48 m from the north side lot line.

There were three other Parties in attendance, including the City and two neighbours. As well, there were three Participants identified of which one attended the Hearing, but did not speak.

At the beginning of the Hearing, the TLAB was advised by the Applicant's counsel, Ms. A. Stewart, that a Settlement had been reached with the City in which its concerns were addressed through revised plans, a revised list of variances, and conditions of approval (Exhibit 1). As a result, the City appeared in support of the variances and did not call any evidence. The other Parties were still opposed to the revised proposal.

Ms. Stewart provided background information for context to the Settlement. She advised that certain additions to the dwelling had been undertaken by the previous owner without the required building permits. The current owner is seeking to legalize and maintain what exists and obtain permits for the construction of additional work on the subject lands. The majority of the shell of the building has existed for more than 10 years prior to the Applicant purchasing the property. When the Applicant purchased the property, it was listed as having 3 units. There were 2 existing additions including an enclosed front porch, constructed with a building permit, and a rear one-storey addition, a portion of which was constructed without a building permit. In addition, at some point, the attic was enlarged and converted to living space.

The Applicant originally converted the house to a single family home and made certain changes including closing off the front door, relocating the main access to the south side of the dwelling, and taking out an interior wall between the enclosed front porch and the living area. In addition, they removed a porch/balcony located at the rear of the property. The Applicant now wishes to reestablish the house as a multi-unit dwelling consisting of 3 units. Recent construction with respect to internal renovations resulted in inspections and enforcement actions by the City resulting in the applications before the Committee to legalize the dwelling within the current built form.

The Settlement discussions with the City resulted in a number of revisions to the application in an effort to address the concerns of the residents. These include: reinstating the front door, relocating the access of the third rental unit from the back of the dwelling to the south side of the dwelling, and converting a number of windows to either clerestory or frosted windows to address overlook concerns. A new survey was completed at the request of the City to confirm the exterior structures. The conditions proposed are intended to resolve the concerns of the City and the neighbours regarding

the state of the exterior of the building and the property and are largely unrelated to the variances. The Applicant requested that the conditions be imposed and that the variances, if approved, only be authorized if the conditions are fulfilled within a certain period of time to ensure that the work is completed.

Mr. M. Schuman, counsel for the City, indicated that the City is in support of the Settlement, including the new plans, revised variances, and conditions. He indicated that he considers the changes to the variances minor for the purposes of Section 45(18)1.1 of the Planning Act.

MATTERS IN ISSUE

The matter at issue is whether the revised variances and conditions meet the applicable tests under Section 45(1) of the Planning Act and provincial policy. The TLAB is to consider the variances from the perspective that the additions have not yet been built.

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan of the Greater Golden Horseshoe for the subject area ('Growth Plan').

Minor Variance – S. 45(1)

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

EVIDENCE

Mr. David McKay, a Partner with MHBC Planning Limited, provided evidence on behalf of the Applicant. He was qualified to give expert land use planning evidence (Exhibit 2a, 2b and 3c – Witness Statement, document disclosure and visual disclosure.) He described the proposal.

The requested variances primarily relate to the building depth, floor space index (fsi), front and north side yard setbacks, and percentage of soft landscaping in the rear yard.

Mr. McKay delineated a neighbourhood for the purpose of evaluating the application bounded by Browning Ave to the north, Pape Ave to the east, Danforth Ave to the south and Chester Ave to the west. Within this area there are similar block patterns, lot configurations, lot sizes, and building types.

Mr. McKay described the neighbourhood as older, with a variety of housing types including single detached, semi-detached, and multiple attached in two to three- storey buildings. Architectural styles vary. He described the neighbourhood as a stable residential area which is not static as there has been reinvestment through renovations, additions, and new builds.

In addition to his neighbourhood study, he prepared an Immediate Area Analysis (Exhibit 2c) of 105 lots on either side of Carlaw Ave to provide a more localized analysis of lot data, including building dimensions, for the properties that are most directly proximate to the subject property. This review was completed based on the City of Toronto's open data, and was measured based on the City's available information regarding lot boundaries and building footprints for accuracy.

He indicated that lot areas for properties in the immediate study area range from 106.55 m² to 392.45 m² with the average at 223.27 m². Approximate fsi's range from 0.39 times the lot area to 1.81 times with the average fsi at 0.93 . Front yard setbacks range from 0.38 m to 6.11 m with the average at 3.15 m. Building depths (measured from the required front yard setback to the rear of the building) range from 11.36 m to 21.14 m (with the average at 15.20 m).

Mr. McKay described the property using photos (Exhibit 2c). The front door, currently a window, is to be reinstated. There is a narrow side yard between the subject property and the property to the north (823 Carlaw Ave) ranging from 0.53 m to 0.48 m. He indicated that while narrow, it could accommodate a person for maintenance purposes. There is a wider side yard between the subject property and the property to the south (819 1/2 Carlaw Ave), as shown on the survey (Exhibit 7) ranging from 2.12 m to 2.08 m. The entrance to the basement unit (2nd unit) is on the south side of the dwelling, adjacent to 819 1/2 Carlaw Ave, with a protective barrier around the entrance. Mr. McKay noted that there has been some damage on the south wall of the dwelling through construction and closing of windows which are addressed as part of the conditions of approval. There is a one- storey rear addition with basement that was built with a building permit (1986). In addition, there is a further raised one- storey rear addition built in the late 1980's, and there has been no building permit found for that addition. There is a third floor attic space that was converted to usable space. It is unclear whether the extent of the attic space was built with a building permit.

Mr. McKay also prepared a photographic survey of the neighbourhood (Exhibit 2c) which demonstrated that the neighbourhood consists of a range of 2 and 3 storey detached and semi-detached dwellings.

The updated survey shows that the enclosed porch on the subject property is in line with the veranda to the north. He advised it is also in line with other verandas' along the street.

The revised plans are included in Exhibit 4. The proposed dwelling will contain 3 units. The main unit would be occupied by the Applicant and accessed from the front door (reinstated) and a side door on the south side leading to the mudroom. The second unit would be accessed by a side door on the south elevation. There is a stairwell proposed on the south elevation to the third unit at the rear. A 2 m high, solid wood guard is proposed over the stairs for the third unit in order to prevent overlook to the adjacent neighbour's backyard. There are a series of windows on the south elevation that have been installed over time without permits. There is an existing large window on the south façade at the first level. The proposal is to convert the window to a clerestory window to provide light while addressing overlook issues. On the upper floor, there are a series of windows and concerns were raised regarding privacy. As a result, one window is proposed to be a clerestory window and the washroom windows are shown as frosted. The third storey attic space is in the middle of the house and has two windows which face west to Carlaw Ave. The current stairs on the rear addition would be removed and the opening converted to a Juliette balcony.

Mr. McKay explained the variances.

Number of Units

Both By-laws permit multiple suites; however, the former By-law only permits multiple suites on the condition that the front of the dwelling is not altered. The new City By-law does not contain this provision and Mr. McKay advised that the former provision no longer applies as a result of the approval of portions of the new City By-law. The enclosed porch was permitted through a 1986 building permit; however, the Applicant removed the main wall between the main living space and the porch resulting in what is considered an alteration to the front of the dwelling which triggered the variance under the old By-law. It is noted that the living space is for the main unit and not associated with either of the rental units.

Building Depth

The By-laws permit a building length of 17 m measured from the required front yard setback. The original zoning review that resulted in the variances before the Committee measured the building length from the required yard setback and not the requested front yard setback. The second zoning review measured length from the proposed front yard setback, resulting in greater building length of approximately 2 m. In Mr. McKay's opinion, the intent is the same in terms of extending the length and it is an appropriate clarification that the building depth be measured from the new setback, as varied. The resulting building depth includes the enclosed front porch and the one storey addition in the rear creating a building depth of 21.6 m.

Floor Space Index

The maximum floor space index is 0.6 fsi and 0.82 fsi is requested (248.82 m²). This is marginally different than what was before the Committee (0.81 fsi) based on the current survey and updated drawings.

Front Yard Setback

The proposal is for a front yard setback is 2.59 m to the front enclosed porch while 4.66 m is required by the Zoning By-law. Since the dividing wall between the living space and the enclosed porch was removed, the porch area becomes habitable space under the Zoning By-laws and therefore the setback is from the enclosed porch. Prior to the interior wall being removed, the enclosed front porch complied. With a setback of 4.94 m, the second floor would comply with the front yard setback. City planning staff, in their report to the Committee, requested that a condition be attached that the required setback be maintained on the 2nd floor to ensure that a second floor addition was not permitted.

North Side Yard Setback

The required side yard setback is 0.9 m under the new City By-law and 1.2 m under the former By-law, where there is an opening. Where there are no openings, the By-law requirement is 0.45 m. The existing dwelling is setback 0.49 m; however, there is a small existing window opening on the northerly sidewall near the front of the dwelling. In Mr. McKay's opinion, the existing setback appears to be legal non-conforming but has been noted in the variance list. The window has existed for some time and is currently frosted and does not look into any windows on the building to the north. No new windows are proposed in the addition and there are no overlook conditions.

Rear Yard Landscaping

The original calculation in the zoning review for the amount of soft landscaping was just over 48% whereas 50% is required. The current zoning review calculated the rear yard landscaping to be 39%. When compared to the revised plan, the difference is that the existing walkway from the garage, which is considered hard landscaping, was not included.

In Mr. McKay's opinion, the revisions to the variances are minor and similar in nature to the variances before the Committee. They do not change the physical building on the property, or the intent of the applications and as such, in his opinion, no further notice is required under Section 45(18)1.1 of the Planning Act.

With respect to the Committee process, Mr. McKay noted that there were both letters of objection and letters of support from people in the neighbourhood. Planning staff submitted a report to the Committee (Exhibit 2b) in which they did not raise any concerns with regard to the variances, but recommended 2 conditions regarding the

front yard and porch to ensure that a second storey addition above the porch would not be permitted. These conditions have been included in the proposed conditions to approval.

In terms of provincial policy, Mr. McKay referred to the Provincial Policy Statement (“PPS”) which directs development to established built up areas and supports the use of existing infrastructure. The policies encourage the provision of a range of uses and a mix and housing types and densities. Policies 1.1.3.1 and 1.1.3.2.1, 1.3.3.1, 1.3.4.1 and 1.4 are the applicable policies. In his opinion, the approval of the variances would maintain the existing residential use and be moderate intensification by reinstating 3 units that were previously located on property. The variances would contribute to the mix and range of housing options in this area, in proximity to existing and planned major transit and utilizing existing infrastructure. In his opinion, the proposed variances would be consistent with the policy objectives of the PPS.

With regard to the 2017 Growth Plan, in his opinion the variances would conform to the Growth Plan, for similar reasons as the PPS, and specifically policies 2.2.1.2 a) and 2.2.1 b), e) and f) through the provision of a complete range of housing and a moderate and reasonable densification of the property in a compact urban area that would support the existing and planned transit.

With respect to the Official Plan (Exhibit 2a -Part 1), Mr. McKay referred to the Neighbourhoods policies in Section 4.1 which permit full range of residential uses including detached, semi detached, duplexes, triplexes, townhouses, and low rise apartment buildings up to four storeys or less in height. The Urban Structure policies and commentary in Section 2.3, indicate that Neighbourhoods are to be considered physically stable areas that are stable, but not static, and not frozen in time. Under Section 2.3.1, the policies recognize that some physical change will occur over time as enhancements, additions, and new housing occur on individual sites. He advised that in this neighbourhood, as outlined in his evidence (Exhibit 1 – Tabs 18 and 19), there have been 37 variances that are similar in nature to those requested by the Applicant, including fsi, building length, and front yard setbacks. In his opinion, these demonstrate that the neighbourhood is not static.

Policy 3.1.2 sets out a variety of urban design policies. Development within Neighbourhoods is to be respectful of the existing neighbourhood context and is to reinforce the existing physical character of buildings, streetscapes, and open space patterns in these areas. Development is to “fit harmoniously” within its existing and planned context.

In Mr. McKay’s opinion, redevelopment is to be compatible with its existing and planned context. He advised that compatible does not mean “the same as” or even “similar to”. It means it can co-exist in harmony.

With respect to the urban design policies in 3.1.2.1, in his opinion, the development:

- frames the street at an appropriate setback in relation to adjacent buildings with

the main entrance at a location that is directly accessible from the public sidewalk;

- maintains all soft landscaping, including the existing tree in the rear yard which will be preserved;
- maintains parking in the rear detached garage, eliminating the need to provide parking between the front face of the dwelling and the public street/sidewalk;
- respects the massing and street proportions of the neighbourhood;
- has a scale, proportion, and the use of appropriate materials which are appropriate in character and appearance for the neighbourhood;
- provides for adequate light, privacy, and adequately limits shadow impacts.

With regard 3.2.1 - Housing, the policies encourage a wide and full range of housing forms and affordability across the City. Section 3.2.1.2 directs that the existing stock of housing will be retained and replenished and intensification will be encouraged through intensification and infill which is consistent with the plan. In his opinion, the directive is to provide for a moderate, reasonable and compatible intensification within the City as a whole and in Neighbourhoods, subject to the policies and criteria.

With regard to the Neighbourhoods policies in Section 4, similar to the urban structure policies, the plan directs that physical changes to established neighbourhoods must be sensitive, gradual and generally fit the existing physical character.

Mr. McKay noted that the existing physical form has been built for some time and the impact is known. Within the context of this neighbourhood, there are 21 multi-units buildings, 9 of which have 3 or more units within a 1 block area of the subject site along Carlaw Ave, Ferrier Ave, and Gough Ave.

Section 4.1.5 sets out criteria for development and deals with a wide variety of development types. The relevant provisions are: c) dealing with height massing scale and dwelling type; e) dealing with setback from the street; and f) the prevailing pattern of rear and side yard setbacks and opens space.

c) Height, massing and scale

In Mr. McKay's opinion, the proposal respects the existing character of the neighbourhood. In terms of density, which is one descriptor of massing and scale, the proposed fsi of 0.82 is within the range of what exists and what has been approved in the area by the Committee and, in his opinion, will not undermine the physical character of the neighbourhood. There have been 11 approved variances with an fsi beyond 0.6 in the immediate study area and 35 in the neighbourhood as defined. Within the immediate area, the fsi ranges from 0.67 fsi to 1.07 fsi.

With regard to the enclosed porch and rear additions, in the immediate area, there are a number of enclosed porches and rear additions and building depths greater than 17.0m. In the immediate neighbourhood, 23 properties have a building depth greater than the

By-law permission, including 843 Carlaw which has a building depth 21.14 m.

e) Setback of buildings from the street

In Mr. McKay's opinion, the proposed front yard setback will respect the existing physical character of the neighbourhood. There are a variety of different building lengths and front and rear yard setbacks in the area. As shown in the photos and the site plan, the alignment of the front of building, even through enclosed, is aligned with built form in terms of the verandas to the north and will not extend beyond the verandas of the properties to the north. The dwelling to the south has no veranda. The enclosed porch contributes to the overall dwelling length, notwithstanding that it is only one storey, and does not occupy the full width of the dwelling.

The reduced front yard setback is triggered as a result of the interior wall between the porch and the living area being removed. This results in the front of the porch being considered the main wall. The enclosed porch is permitted and has been legally existing since 1986. The site plan (Exhibit 4) demonstrates that the main wall behind the front porch and at the second storey is in line with the dwellings to the north and south in terms of line of house. It is only the porch enclosure that is within the setback requirement. In Mr. McKay's opinion, from a physical perspective, the outer condition and setback have existed for over 30 years and fit within the neighbourhood in terms of the alignment in the immediate area and is not out of keeping with the character. There have been a number of variances for reduced setbacks, including 820 Carlaw Ave which was had a front yard setback of 3.1 m approved as a result of a previous open-air veranda being enclosed. The built form along the street is maintained and the reduction is not noticeable if walking down the street. He advised that the reinstatement of the front door will provide a better street condition and was a key consideration of the City in the revision proposed.

f) Prevailing patterns of rear and side yard setbacks and landscaped open space

The required north side yard setback under the new City By-law is 0.9 m while it is 1.2 m under the former By-law 438-86. The north setback of 0.48 m is reflective of the original building outline that has existed on the property since it was constructed and will therefore respect the existing physical character of the area. As shown on the Plans, there is only one small privacy window located on the north side wall, which is why the existing dwelling requires a side yard setback of 1.2 m under the Former By-law. This window does not provide any direct sightlines into the abutting property/dwelling. Based on his observations, there are a number of dwellings in both the immediate area and the neighbourhood with reduced side yard setbacks on one or both sides, both with and without openings on the side wall.

The rear yard landscaping is an existing condition and will continue to provide soft landscaping for infiltration of stormwater to reduce the impact of rain events on the storm system. Based on his review of aerial imagery of the immediate area, the space between the rear of the dwelling and the detached garage is typically a mixture of hard

and soft landscaping in order to maximize the outdoor benefit and usability of this small space. While there is a reduction in percentage, in his opinion the variance respects the existing physical character of the area and provides a proportionate amount of hard and soft landscaping.

In summary, it is Mr. McKay's opinion that both individually and collectively, the variances maintain the general intent and purpose of the Official plan.

With respect to the Zoning By-laws, Mr. McKay notes the height of 10 m is maintained and the multiple and secondary suites are permitted, with conditions. The intent of the building depth provision is to provide both consistency in built form and to address compatibility between dwellings and to mitigate overlook, shadow and privacy issues created from dwellings that extend beyond the rear of the adjacent buildings. Building depth is measured from the required front yard setback. The depth is created by the enclosure of the porch which reduces the required front yard setback and the one storey addition a rear.

In Mr. McKay's opinion, the front porch does not create any discernable impact to either adjacent property and it fits in with the character of the neighbourhood. The rear addition creates more impact in terms of privacy and overlook and, in his opinion, those have been addressed through the revised design of the building by maintaining windows facing east into the rear yard and by minimizing the windows on the south side wall eliminating overlook and privacy concerns. To the north, there are no new windows related to the additions. The added length is limited to one storey components. The tallest component of the building is positioned towards the middle of the house, which would have the greatest impact on shadow. There have been five (5) approved decisions in the neighbourhood and immediate area that have approved building depths greater than 17.0 m, demonstrating that as property owners renovate and/or construct rear additions, a slightly increased building depth can be expected. Limitations of windows address concerns in terms of overlook and privacy. In his opinion, the variances and conditions meet the general intent and purpose of the zoning bylaw.

In terms of fsi, in Mr. McKay's opinion, the intent and purpose of this provision is to maintain a scale and massing of development that is compatible with the neighbourhood and to mitigate impacts such as shadowing or overlook. The existing dwelling steps back in height from both the front and rear lot lines towards the middle portion of the dwelling. The majority of the massing is therefore located in the middle of the building, which results in a building that does not overpower the streetscape and does not result in any undue adverse shadow impacts or overlook. The issues of overlook and shadow impact and privacy are limited by the revised design. In his opinion, the variance it does not set a negative precedent, nor is out of keeping with what already has been approved or existing. In his opinion, the fsi is within an appropriate range that is suitable for the character of this neighbourhood. The general intent and purpose of the By-law is maintained.

With regard to the front yard setback, the intent and purpose of a minimum required

front yard setback provision is to ensure a consistent front wall alignment among dwellings within a neighbourhood and to minimize shadow impacts from a dwelling that extends too far in front of the adjacent properties. In his opinion, the difference between the edge of the covered patios of the abutting properties and the front wall of the existing dwelling is unnoticeable from the street. In addition, the enclosed verandah on the subject lands maintains a similar roof structure as that of other properties which have support walls or columns to support overhead roof structures. In his opinion, the variance will maintain the general intent and purpose of the Zoning By-law.

With respect to side yard setbacks, the intent of the requirement is to address access to the rear yard, which is maintained on the south side (By-law compliant), and allow for maintenance of the side walls, which is provided on both sides. In Mr. McKay's opinion, based on his photo survey, narrow side yards are part of the pattern of original development in this neighbourhood. There is no overlook issue as the one small window on the north side is frosted and has sightlines only to the south side wall of the adjacent dwelling. In his opinion, the side yard variance meets the intent and purpose of the Zoning By-laws.

The general intent and purpose of a minimum required rear yard landscaping provision is to ensure that there will be sufficient soft landscaping to provide adequate permeable surface and drainage. In Mr. McKay's opinion, the combination of permeable pavers and landscaping is appropriate and reflects the character of the neighbourhood and the intent and purpose of the Zoning By-law.

With respect to the alteration to the front wall under the former bylaw, Mr. McKay confirmed that the former provision no longer exists and that removal of the wall is permitted. The intent of the former provision was to ensure that significant alterations to front of the dwelling are not made to provide additional units that create a built form that alters the relationship of building to street. In this case, the alteration relates to the main dwelling unit and not to the creation of additional units and the relationship to street is not physically altered. It is also being enhanced by the reinstatement of the front door. The house will appear as a single detached dwelling and the relationship of dwelling to the street will not be adversely impacted. In his opinion, the general intent and purpose of the By-law is maintained.

In Mr. McKay's opinion, the proposal is desirable for the appropriate development of the subject lands. The variances would allow for reinvestment of the housing stock, the creation of the additional rental uses, and allow for a variety of housing options in a location that is close to, and supportive of, existing and proposed transit. In his opinion, the design of the dwelling, as amended, has addressed a number of the issues that were identified by the neighbours regarding privacy and overlook conditions. There will be minimal visual impact from the street. While the length is greater than either neighbour, the rear addition has limited impact in terms of overlook or privacy as a result of the redesign and the proposed conditions.

In his opinion, the variances, individually and collectively are minor in nature. They are

in keeping with what has been approved in this neighbourhood. He advised that the test is not one of “no impact” but rather “no unacceptable adverse impact” of a planning nature. In his opinion, the potential impacts have been addressed and the proposed conditions, based on the revised plans, do not create an undue adverse impact on the streetscape or the adjacent neighbours. While the variances would legalize some previous construction that has taken place, it does not change his opinion that it is appropriate or desirable.

In summary, in Mr. McKay’s opinion, the proposal meets all the 4 tests, is consistent with the PPS, and conforms to the Growth Plan. He recommends approval of the variances, subject to the revised plans and conditions set out in Exhibit 1. He explained that some of the conditions are not common in terms of the level of detail relating materials, timing, and maintenance. He advised that these would normally be dealt with through building permits; however, in this case the conditions ensure that concerns identified are dealt with in a timely and reasonable manner.

Ms. Panagiotopolous is a Party and is the owner and occupant of 819^{1/2} Carlaw Ave, the property to the south of the subject property. Her Participant Statement and filings are contained in Exhibits 9 a, b and c. She does not support the Settlement reached by the Applicant and the City and does not think that the concessions made address the issues. She would like the decision of the Committee upheld. Ms. Panagiotopolous’s main concern relates to the impact of the proposal abutting the shared property line. She explained that, despite the revisions, there would still be 3 entry/exit doors on the south side wall adjacent to her property. She believes that the side door should not be used as the front door and that there should not be 3 doors along the side yard. The issue to her is privacy and the activity that will result at all times of the day and night. In her view, the main door should be at the front of the house and back door at the back of the house. In her opinion, the reinstated door at the front of the house will only function as a window and not the main door. She advised that there are no other houses that have 3 doors facing another property.

Ms. Panagiotopolous advised that she has access to the south side yard on the subject lands as her house is located almost on the property line. She explained that the proposed stair enclosure on the south side to provide access to the third unit will be 10 ft wide and 12 feet from the ground which would exceed her roof height which is 11 ft at this location, towering over her house. In her opinion, the door and large enclosure belong at the back of the house and not the side of the house. She is concerned that the proposed reopening of certain windows that were closed by the City goes against the City’s previous actions. She does not feel that the window on the south side of the dwelling is required to provide light to the third unit as there is a large window on the rear wall facing east.

Ms. Panagiotopolous does not feel there is enough soft landscaping. She is concerned that there is not enough backyard area for the residents of the 3 homes and as a result they will use the side yard between the houses as their back yard. She noted that backyard has a tree in the middle and as a result there is no place for people to sit and

therefore the side yard is used. She advised the current side door slams and causes noise and with additional units accessed from the side, the noise will increase.

She is also concerned that the residents of 821 Carlaw Ave currently cross her property illegally to access their garage. People associated with the subject property also park on her property off the lane in the rear.

Ms. Panagiotopolous advised that the subject house is larger than any other house on the street. She referred to new houses further south that were built without any variances. She indicated that having all of the doors on the south side of the dwelling is not in keeping with physical character of the area. Of the 100 homes on her street, she noted that only one other house that has a side door facing the south but it does not share a walkway with neighbours. She considers the side yard an alleyway that has activity at all times of the day and that is the privacy issue. She believes she has a right of access on the Applicant's property along the south side yard. She noted that of the 100 homes on her street, there are no 3 unit dwellings and eleven 2 unit dwellings. All new development on her street has been for single family dwellings.

Ms. Panagiotopolous is concerned with the process following the Committee meeting leading to the Settlement with the City. She does not feel the Settlement addresses her main concern of privacy and the side yard being used as a front yard. Her house is 12 ft wide and she described the proposed enclosure around the door as excessive and does not think it would mitigate her privacy and overlook concerns. She is not aware of why the rear door was closed off and moved to the south side yard as part of the Settlement, but would prefer the door to stay at the rear of the property.

She indicated that there were a number of windows that existed and the building department required a number of them to be closed. The original plans had errors and showed the windows in the wrong location.

Ms. Panagiotopolous stated that the variances are not minor in nature as evidenced by Committee decisions in which a number of variances were refused in the neighbourhood. She referenced recent Committee decisions in the area that refused variances for similar building length, fsi and front yard setbacks including:

- 91 Chester Ave – proposed building depth 19.93 m, fsi 0.7, front yard setback 2.81 m - refused
- 39A Woodcrest – proposed fsi 0.8 refused
- 29-31 Chester Ave – proposed fsi 0.8, proposed front yard setback 0.98 m – refused
- 62 Dewhurst Blvd – proposed fsi 0.9 - refused

Ms. Panagiotopolous is concerned that the front porch enclosure will set a precedent since there are a number of front porch enclosures, but they are not used as usable space. She feels that if the precedent is set, everyone will do the same. Her suggestion

to the TLAB is that that the front addition be retained, the rear addition be removed, and the doors on the side of the house (with the exception of door leading to the basement stairs) be removed. She feels that approving the proposal would be rewarding owners and developers who do illegal work. She described the difference between the original and revised plans as minor and, in her opinion, her privacy is still an issue. The side yard is being turned into a front yard and it affects her ability to enjoy her property.

Mr. G. Frimis is the son of Mrs. A. Frimis, the owner and resident of 823 Carlaw Ave. He appeared to represent his mother and convey her concerns (Exhibits 11 a, b and c). Mrs. Frimis has resided in the house since 1978. He described how the dwelling on the subject site, which started as a small 2-storey home, has changed over the years. The owner added a rear addition to bring the length to 17.1 m. There was no deck at the rear at that time. Later, the front porch was enclosed. The current rear addition is a result of a raised deck being enclosed. The attic was converted to livable space to accommodate a family member with a small addition, without a building permit. Mr. Frimis also believes that the Applicant added to the enclosed porch at the front.

Mr. Firmis indicated that they have a fire hazard concern with the window that has been closed off for privacy reasons on the rear addition facing north adjacent to his property. It has remained boarded up for 10 years. The proposed plans indicate a kitchen along the north wall of the addition in the rear. He is concerned with the fire hazard potential, as his house is wood frame construction with brick veneer.

He is also noted his mother's concern with the large existing tree in the backyard of the subject property. He stated it has been an ongoing annoyance in terms of blocking sunlight and dropping fruit on their property.

Mr. Firmis referred to a series of photos showing the view from his mother's kitchen (Exhibit 11 e) to indicate the lack of sunlight that they receive and the resulting green algae on the south side of their dwelling.

He is concerned that the rear and front additions are not built on proper footings/foundation that are sufficient to support the additions. He is also concerned that the ongoing changes to the windows have destabilized the structure.

Mr. Firmis indicated that Mrs. Firmis has a continued concern with the condition of the exterior of the house on the subject property and the lack of maintenance.

ANALYSIS, FINDINGS, REASONS

The TLAB has carefully considered the evidence provided on behalf of the Applicant's professional planner and the other Parties. There was considerable concern by the other Parties, regarding the cumulative impact of the additions on their properties, particularly the improvements made without the required permits. There was also some uncertainty and disagreement as to what was built with a building permit. There were obviously some negative feelings towards the Applicant relating to the condition of the

exterior of the building and other ongoing issues, including the condition of the tree in the backyard and the use of the neighbour's yard to access the lane.

It is important to note that the TLAB must consider the merit of the proposed variances based on the four tests of the Planning Act and provincial policy. In addition, TLAB's consideration of the variances is premised on the assumption that the development has not proceeded. I accept that the proposed revisions are minor as the building footprint has not changed from the Applications before the Committee. No new variances are being introduced. No further notice or consideration is required under s. 45 (18)1.1 of the Planning Act.

A number of genuinely held concerns were raised by the Parties relating to the loss of privacy, sunlight, and enjoyment of their properties. These are relevant considerations that must be taken into account when evaluating any variances. However, it is important to separate the variances from the issues raised as certain concerns are peripheral to the variances. In this regard, the evidence demonstrated that:

- No variance is required to permit 3 dwelling units within the subject house;
- There is no restriction on the number of doors on the side of the house;
- There is no variance required for the south side yard platform (stair enclosure);
- There is no height variance required;
- There are no variances required for the proposed windows on the south side of the house, as proposed.

As a result, a number of the concerns expressed by Ms. Panagiotopolous do not arise from the variances. Her main concern was the activity which would result from having 3 access doors on the south side of the dwelling adjacent to her property. The side yard referred to by Ms. Panagiotopolous is clearly on the Applicant's property. Whether or not Ms. Panagiotopolous has the right of access over the Applicant's side yard is not a matter for the TLAB to establish. The evidence demonstrated that the side yard, even with the proposed stairs and associated enclosures, is adequate to provide access to the rear yard without the necessity of utilizing the small sliver of side yard associated with her property. While her concern over the increase in activity associated with the entrances to the units on the side of the house is understood, there are no variances associated with the side yard, or the number of units proposed. The Applicant has the ability to use their side yard as they choose, subject to any other relevant City By-law such as the Noise By-law.

The City has attempted, through the conditions of approval, to address a number of issues that are not directly related to the variances, but are of concern to the City and the neighbours. This includes, in addition to exterior repairs, reinstating the front door, addressing overlook issues associated with the windows, and relocating the access from the rear of the house to the side of the house with an enclosure to address overlook. The relocation of the rear access to the side was in order to address overlook into the backyard of the neighbours. This matter is only before the TLAB insofar as it is

included in the proposed conditions as part of the Settlement. I agree with Mr. McKay that the overlook to the backyard of the neighbours will be reduced with the relocation of the access.

Similarly, the issue of the tree in the backyard that is causing a nuisance to Mrs. Firmis is not related to the variances. It is a matter between neighbours. The technical concerns raised by Mr. Firmis regarding fire hazard and structural concerns would be addressed by the Building Department through the building permit review process whether or not variances are required.

With respect to the variances, the front yard setback variance is a result of the removal of the dividing wall between the living space and the porch, resulting in the porch becoming part of the living space. The front wall of the porch then forms the front wall of the house for the purpose of the setback measurement. The enclosed front porch is legal and was built with a permit. The setback has not changed. I agree with the evidence of Mr. McKay that the proposed setback is in keeping with existing physical character of the neighbourhood. The legally enclosed porch has been in existence for many years and is in line with other verandas to the north. The removal of the interior wall does not affect the physical form of the dwelling from the street. The conversion to living space will maintain an “eyes on the street” function of a porch. There is no negative impact as a result of the conversion and no additional massing on the street. The reduction in setback is only for the area of the enclosed porch. Planning staff did not have any issue with the variances including the front yard setback. They recommended that conditions be imposed to ensure that the porch shall be no greater than 1-storey in height and that the setback for the existing second floor remain unchanged at 4.49 m.

The building depth variance is related to the front enclosed verandah and the rear addition. Building depth is measured from the required front yard setback. The Building examiner measured depth from the new, reduced front yard setback created by the porch enclosure. The purpose of a maximum depth provision (as distinct from a maximum length provision) is to ensure compatibility among dwellings and to mitigate overlook, shadow, and privacy issues created by extending beyond the rear of adjacent buildings. In this regard, the inclusion of the one-storey porch in the depth of the structure does not impact the extent to which the dwelling extends into the rear yard. The proposed 2.47 m one storey rear addition accommodates part of the proposed 3rd unit. There are no windows on the north side of the addition and the window on the south side has been converted to a clerestory window preventing overlook. The evidence showed that the depth is compatible with depths in the immediate area and depths that have been approved by the Committee. I agree that the shadowing created by the one storey addition will not result in any undue shadow impacts. The shadowing on Mrs. Firmis’ house is largely related to the third storey middle component of the dwelling.

The floor space index variance is a result of the built form. The dwelling steps back in height from both the front and rear of the subject property, with the majority of the massing in the middle portion of the dwelling. This results in an appropriate relationship

with the street and has no adverse shadow or overlook issues. The fsi is within the range of densities that exist and have been recently approved in the immediate area and neighbourhood.

The north side yard setback variance is considered a technicality, as the dwelling meets the side yard setback requirement for a wall without openings. The small frosted window which causes the variance has existed for some time, possibly since construction. Mr. McKay considers it to be legal non-conforming; however, the building examiner identified the variance for completeness. There is no adverse impact associated with the window and the existing side yard setback is adequate to access the side of the dwelling.

The soft landscaping in the rear yard is calculated to be 39% whereas 50% is required. Ms. Panagiotopolous was concerned that the rear yard was too small to provide adequate amenity for the 3 dwelling units and that the building residents would use the side yard for amenity. There is no rear yard setback variance required that would affect the size of the backyard, nor is there a coverage variance required. The percentage of soft landscaping is related to the proportion of soft surface and hard surface and not the amount of amenity area. There was no evidence provided that there is an issue with adequate permeable surface and proper drainage.

The Applicant made revisions to the plans and agreed to a number of additional conditions with the City in an effort to address the concerns raised by the neighbours related to the variances and the exterior condition of the building. I accept the uncontradicted planning evidence of Mr. McKay that the proposed development fits within the physical character of the neighbourhood and causes no undue negative impacts. The Official Plan encourages the existing housing stock to be retained and replenished and encourages the provision of a range and mix of housing units. The proposal will assist in achieving the housing targets in an area that is well served by transit.

The TLAB is satisfied that the revised variances, together with the conditions, meet the criteria set out in Section 45(1) of the Planning Act. The general purpose and intent of the Official Plan and Zoning By-laws is maintained. The proposal results in an appropriate and desirable development for the subject property and the variances are considered minor in the context. The TLAB is satisfied that the variances are consistent with the Provincial Policy Statement and conform to the Growth Plan.

DECISION AND ORDER

The appeal is allowed in part. The following variances are authorized:

1. Chapter 10.10.40.30.(1)(A), By-law 569-2013

The maximum permitted building depth for a detached house is 17.0 m.

The proposed building depth is 21.66 m.

2. Chapter 10.10.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index is 0.6 times the area of the lot (182.92 m²).
The proposed floor space index is 0.82 times the area of the lot (248.82 m²).

3. Chapter 10.10.40.70.(1), By-law 569-2013

The minimum required front yard setback is 4.66 m.
The proposed front yard setback is 2.59 m.

4. Chapter 10.10.40.70.(3)(A)(i), By-law 569-2013

The minimum required side yard setback for a detached dwelling is 0.9 m.
The proposed north side yard setback is 0.48 m.

5. Chapter 10.5.50.10.(3)(A), By-law 569-2013

A minimum of 50% (58.86 m²) of the rear yard shall be maintained as soft landscaping.
The proposed rear yard landscaping area is 39% (46.04 m²).

6. Section 6(3) Part I 1, By-law 438-86

The maximum permitted gross floor area is 0.6 times the area of the lot (182.92 m²).
The proposed residential gross floor area is 0.82 times the area of the lot 248.82 m²).

7. Section 6(3) Part II 2(II), By-law 438-86

The minimum required front yard setback of a building on an inside lot is 4.66 m.
The proposed front lot line setback is 2.59 m.

8. Section 6(3) Part II 5(I), By-law 438-86

The maximum permitted depth of a house is 14.0 m.
The proposed building depth is 21.98 m.

9. Section 6(2) 1.(iii)(a), By-law 438-86

A converted house is permitted, provided there is no exterior alteration of or addition to the front wall.

The proposal includes an addition to the front wall of the converted house.

10. Section 6(3) Part II 3.F(I)(2), By-law 438-86

The minimum required side yard setback where the side wall contains openings is 1.2 m.

The proposed side lot line setback is 0.48 m on the north side.

The authorization is subject to the following Conditions of Approval:

1. The proposed renovations to the existing dwelling shall be completed in accordance with the Site Plan and Elevations prepared by Calia Designs and dated March, 2018, and attached hereto, subject to any minor revisions required in order to comply with the Ontario Building Code.

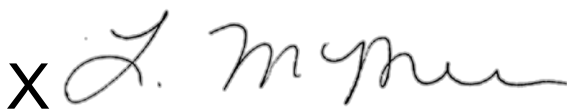
2. The enclosed front porch, requiring the front yard setback variances under By-laws

Decision of Toronto Local Appeal Body Panel Member: L. McPherson
TLAB Case File Number: 17 267941 S45 29 TLAB

569-2013 and 438-86, shall be no greater than one storey in height.

3. The setback from the front property line for the existing second floor of the dwelling as shown on the Site Plan, shall remain unchanged at a minimum of 4.94 m.
4. The façade materials shall be stucco and/or siding and shall be installed where unfinished and/or repaired where damaged.
5. The proposed exterior work on the exterior walls of the building (installation of doors, windows, stairs, and application or repair of exterior finishes), shall be completed by December 31, 2018, failing which the variances shall no longer be authorized.
6. The application or repair of exterior finishes on the exterior walls of the building shall be completed during a consecutive three-week period, during hours that comply with Chapter 591 of the City of Toronto Municipal Code (Noise By-law).
7. The side yards between 819¹/₂, 821, and 823 Carlaw Avenue shall be restored to their original or similar state, with the owner having the sole discretion to select the new materials, if new materials are installed (e.g., concrete or pavers) ("landscaping work").
8. The landscaping work in the side yards between 819¹/₂, 821, and 823 Carlaw Avenue will be completed by August 1, 2019.

Note: If there are any difficulties implementing these conditions, the TLAB may be spoken to.

A handwritten signature in black ink, appearing to read 'L. McPherson', with a large 'X' to its left. The signature is written over a horizontal line.

Laurie McPherson
Panel Chair, Toronto Local Appeal Body

RECEIVED

By Toronto Local Appeal Body at 11:51 am, May 01, 2018

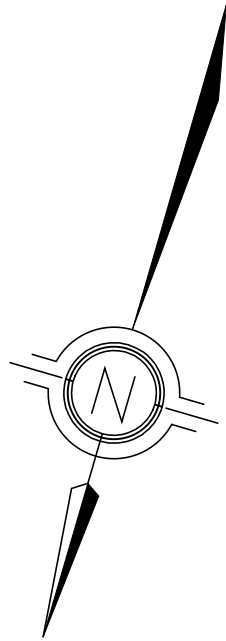
Toronto Local Appeal Body

EXHIBIT # 4

Case File Number: 17 267941 S45 29

Property Address: 821 Carlaw Ave

Date Marked: May 03, 2018



EXISTING PROJECT DATA:

ZONING: R(dO.G)(x3 | 2)

SIDE YARD SETBACK:

2.08m ; 0.49m

FRONT YARD SETBACK:

4.94m (main house)

2.59 (enclosed porch)

REAR YARD SETBACK:

17.87m (main house)

15.40m (addition)

LOT AREA: 305m²

GFA: 1ST FLOOR = 110m²

2ND FLOOR = 86m²

ATTIC = 25m²

TOTAL = 221m²

FSI: 221/305 = 0.72

BUILDING HEIGHT = 9.23m

Project Title

821 CARLAW AVENUE
TORONTO, ONTARIO

Drawing Title

SITE PLAN

Drawn by:

ROSELLA GILMOUR

BCIN:39846

Qualified "Other Designer"
meeting requirements of OBC
Div. C 3.2.5.

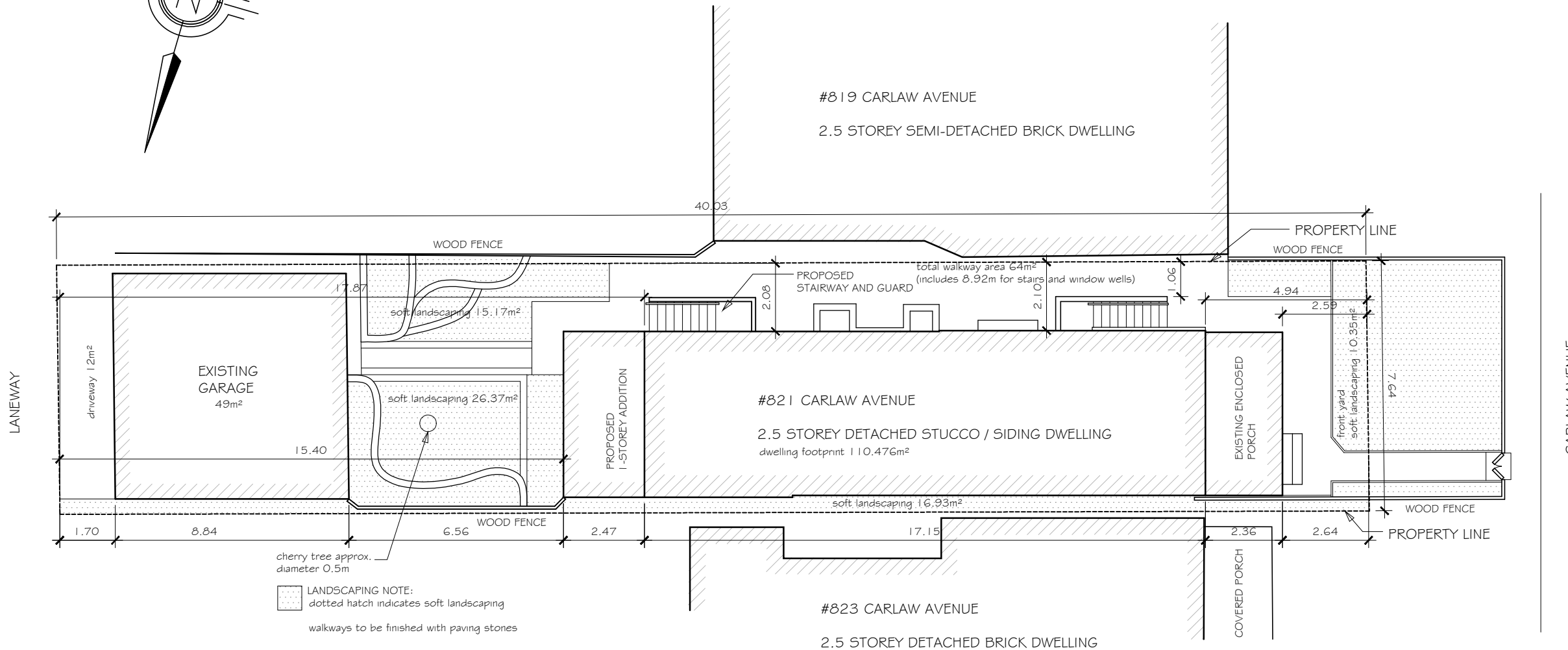
CALIA DESIGNS
caliainteriordesigns@gmail.com
416-455-1869

Date
MARCH 2018

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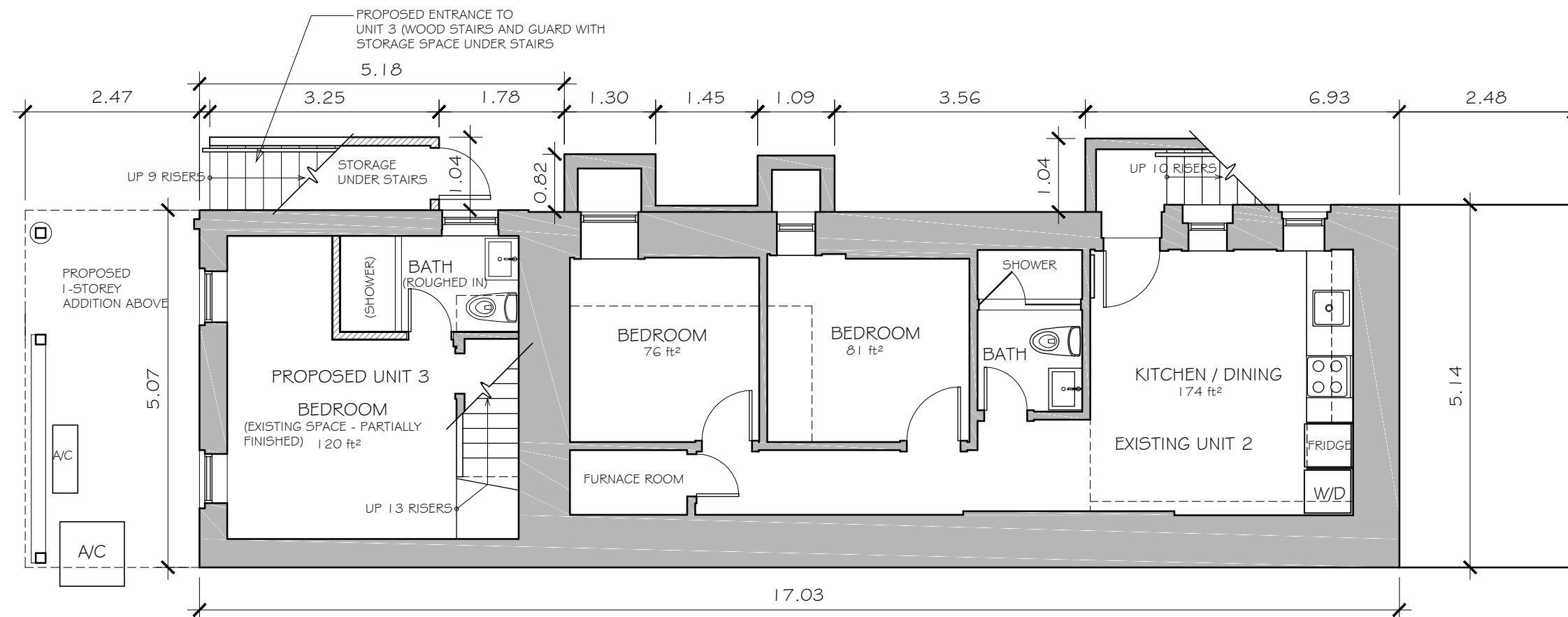
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1D-01



cherry tree approx.
diameter 0.5m

LANDSCAPING NOTE:
dotted hatch indicates soft landscaping
walkways to be finished with paving stones



NOTES:

EXISTING REAR BASEMENT SPACE TO BE CONVERTED INTO BEDROOM AND BATHROOM FOR PROPOSED UNIT 3. FRONT BASEMENT SPACE IS EXISTING UNIT 2 - NO CHANGES PROPOSED TO THIS UNIT.

Project Title

821 CARLAW AVENUE
TORONTO, ONTARIO

Drawing Title

BASEMENT FLOOR PLAN

Drawn by:

ROSELLA GILMOUR
BCIN:39846
Qualified "Other Designer"
meeting requirements of OBC
Div. C 3.2.5.

CALIA DESIGNS
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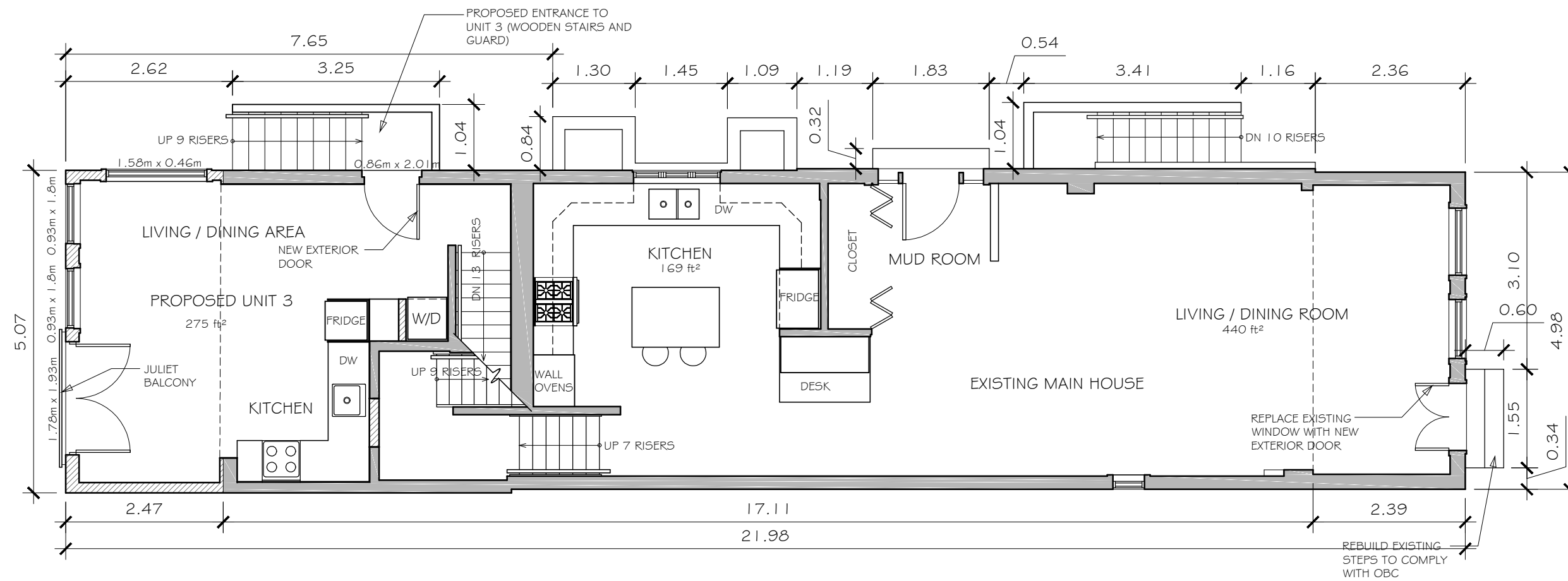
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1D-02

NOTES:

FRONT WINDOW IN ENCLOSED PORCH TO BE CONVERTED BACK TO FRONT ENTRANCE FOR MAIN HOUSE.
EXISTING SIDE ENTRANCE TO MAIN HOUSE TO REMAIN AS IS.

EXISTING REAR PORTION OF HOUSE TO BE COMBINED WITH PROPOSED ADDITION TO CREATE LIVING AND KITCHEN SPACE FOR PROPOSED UNIT 3.
NEW SIDE ENTRANCE TO REAR UNIT TO BE CREATED.



Project Title

821 CARLAW AVENUE
TORONTO, ONTARIO

Drawing Title

GROUND FLOOR PLAN

Drawn by:

ROSELLA GILMOUR
BCIN:39846
Qualified "Other Designer"
meeting requirements of OBC
Div. C 3.2.5.

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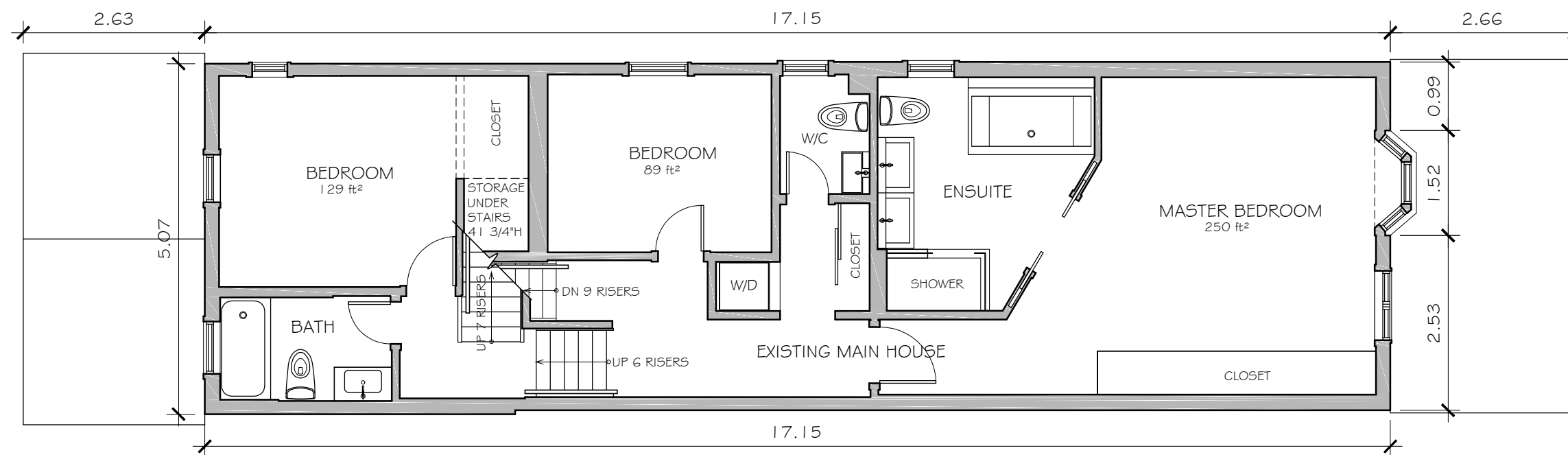
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1D-03

NOTES:
NO CHANGES PROPOSED TO THIS LEVEL.



Project Title
821 CARLAW AVENUE
TORONTO, ONTARIO

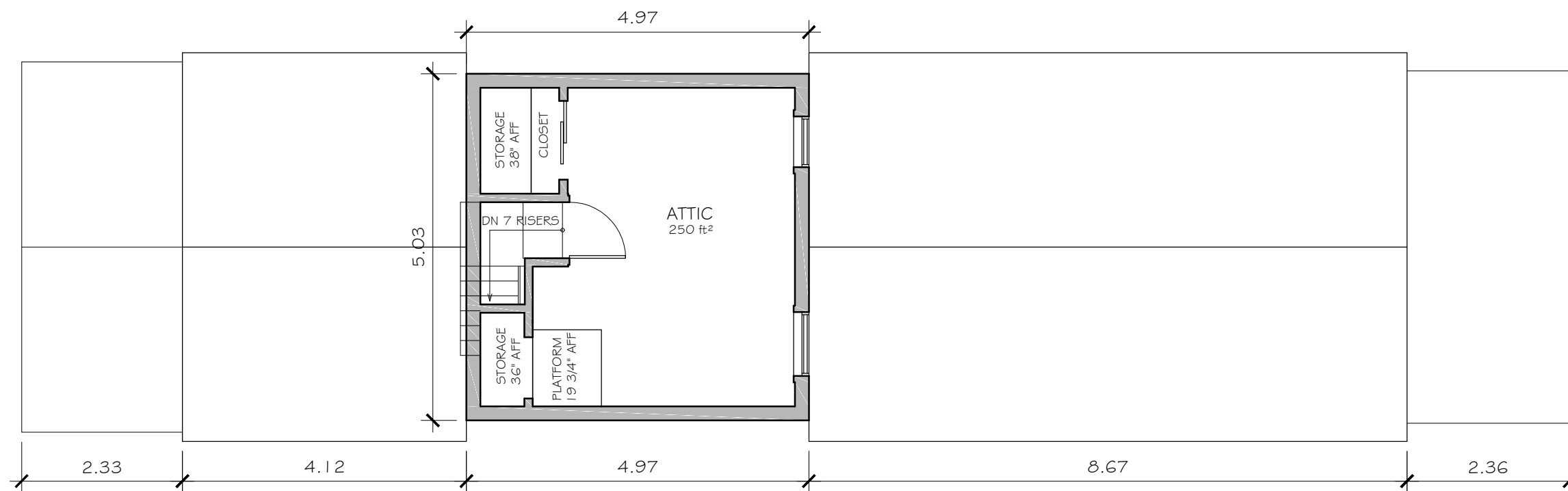
Drawing Title
SECOND FLOOR PLAN

Drawn by:
ROSELLA GILMOUR
BCIN:39846
Qualified "Other Designer"
meeting requirements of OBC
Div. C 3.2.5.

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NOTES:

Project Title

821 CARLAW AVENUE
TORONTO, ONTARIO

Drawing Title

ATTIC FLOOR PLAN

Drawn by:

ROSELLA GILMOUR
BCIN:39846
Qualified "Other Designer"
meeting requirements of OBC
Div. C 3.2.5.

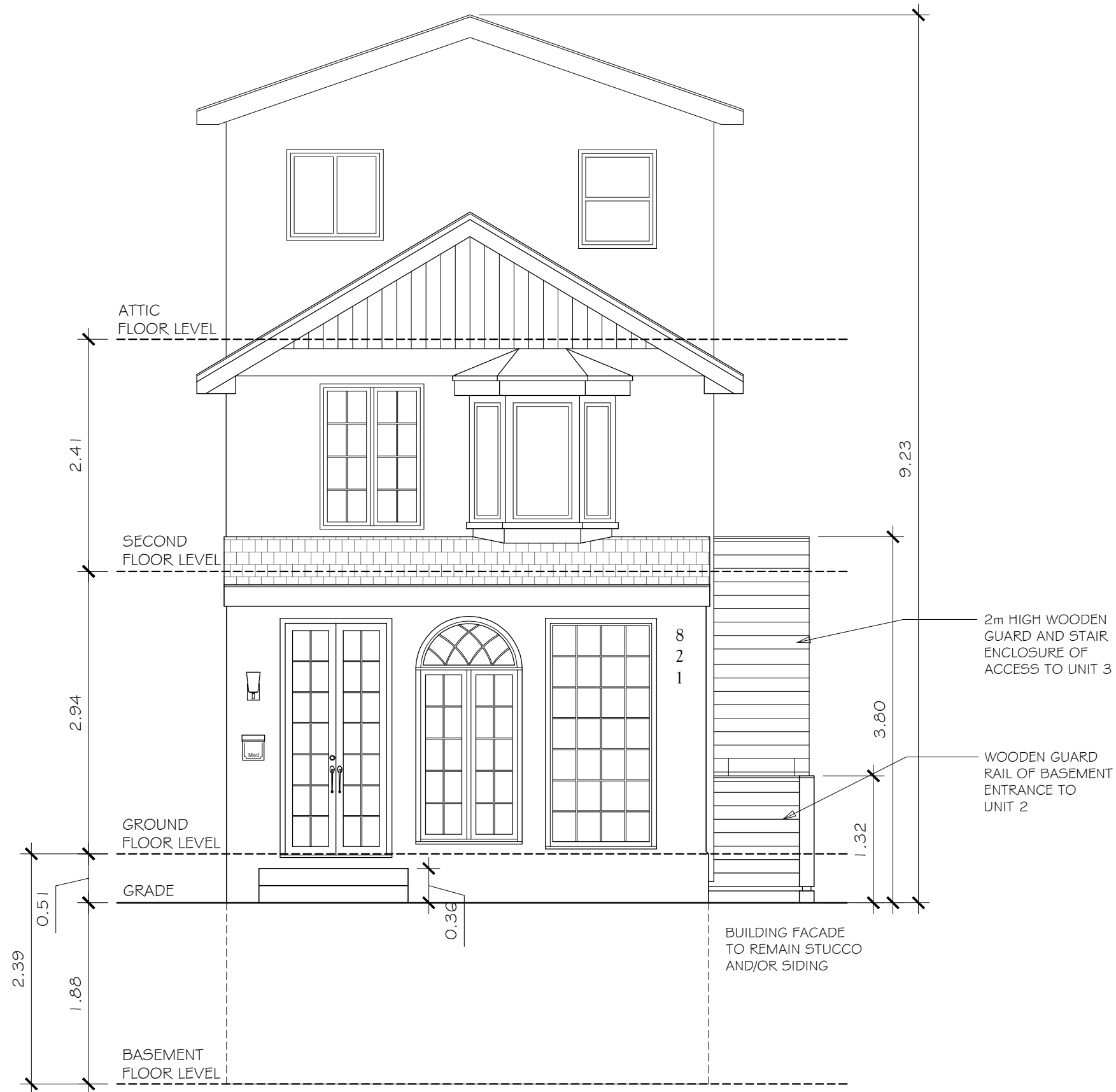
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1 D-05



NOTES:

BUILDING FACADE IS EXISTING STUCCO AND SIDING

Project Title

821 CARLAW AVENUE
TORONTO, ONTARIO

Drawing Title

WEST (FRONT) ELEVATION

Drawn by:

ROSELLA GILMOUR
BCIN:39846
Qualified "Other Designer"
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Div. C 3.2.5.

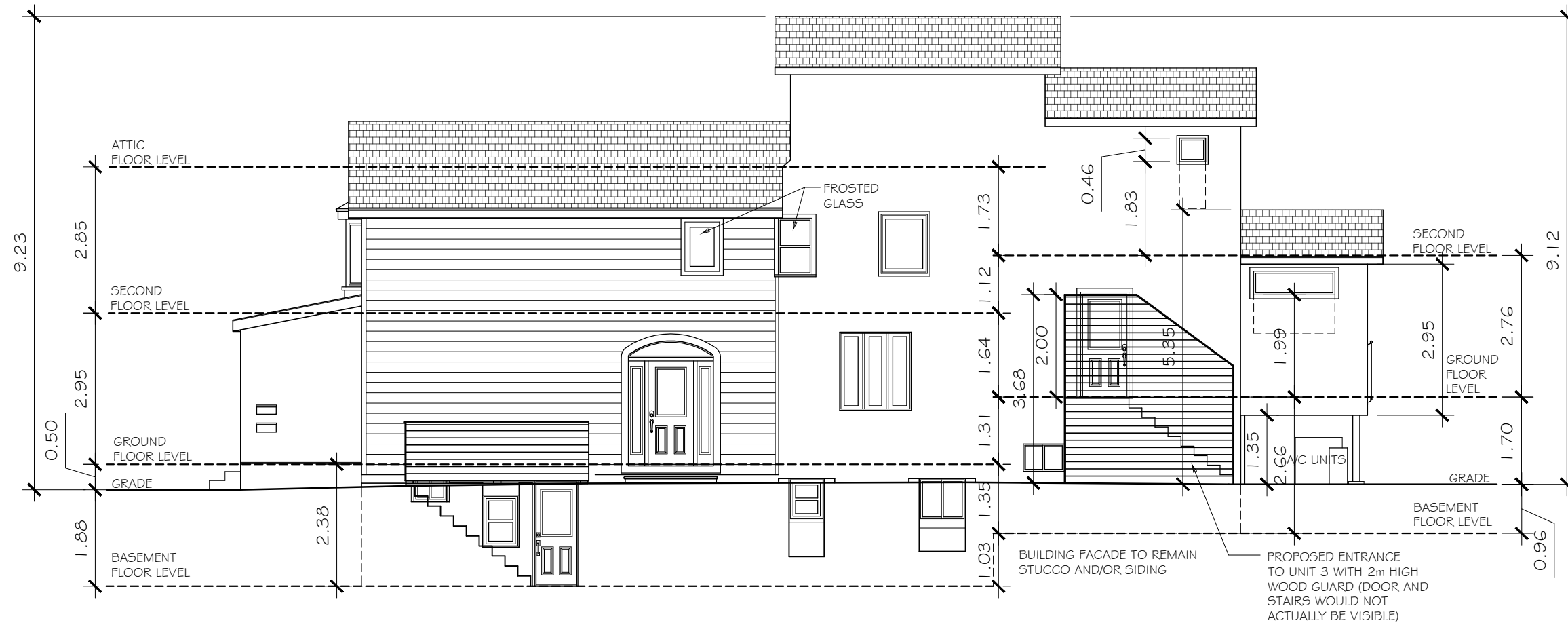
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Sheet #

1D-06



NOTES:

BUILDING FACADE IS EXISTING STUCCO AND SIDING

Project Title

821 CARLAW AVENUE
TORONTO, ONTARIO

Drawing Title

SOUTH (SIDE) ELEVATION

Drawn by:

ROSELLA GILMOUR
BCIN:39846
Qualified "Other Designer"
meeting requirements of OBC
Div. C 3.2.5.

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NOTES:

BUILDING FACADE IS EXISTING
STUCCO

Project Title

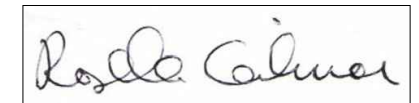
821 CARLAW
AVENUE
TORONTO, ONTARIO

Drawing Title

NORTH (SIDE)
ELEVATION

Drawn by:

ROSELLA GILMOUR
BCIN:39846
Qualified "Other Designer"
meeting requirements of OBC
Div. C 3.2.5.



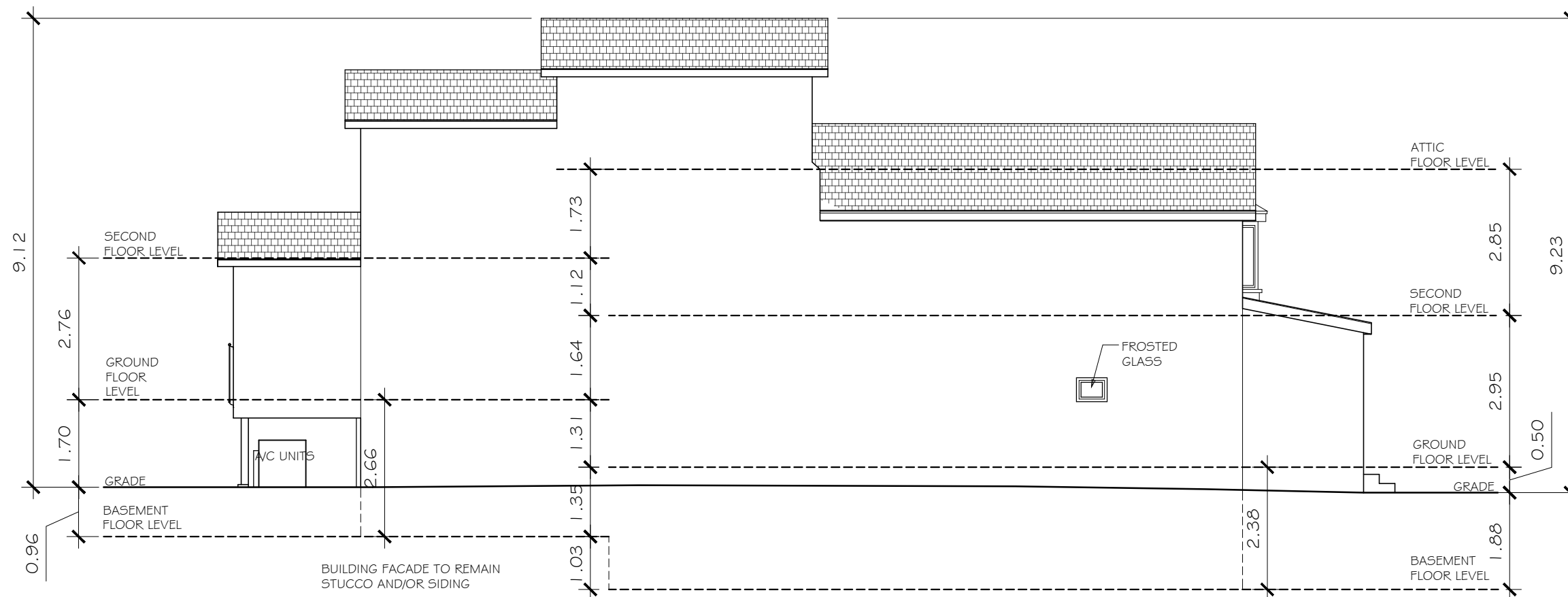
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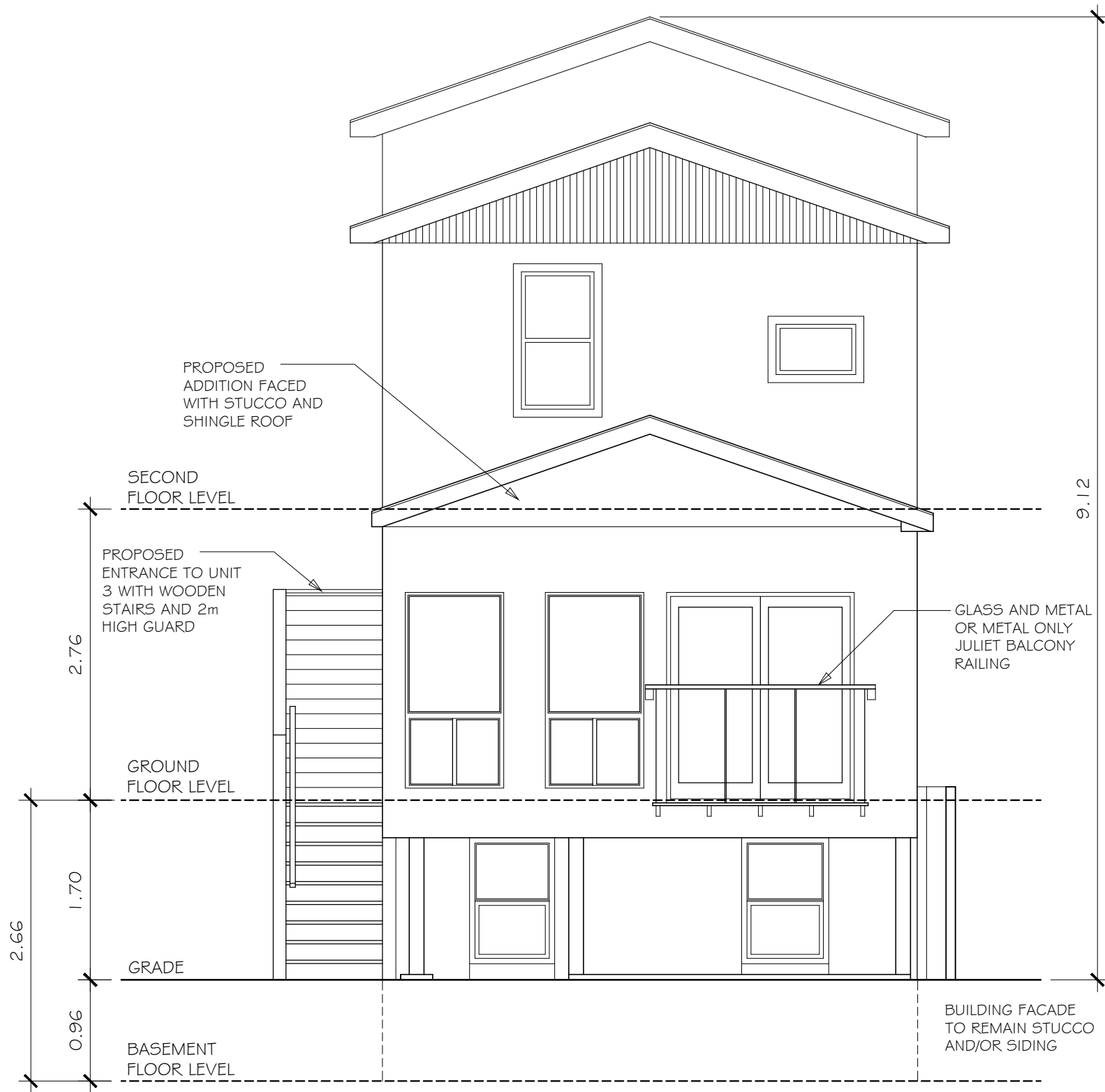
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1 D-08





NOTES:
 BUILDING FACADE IS EXISTING STUCCO AND SIDING

Project Title
821 CARLAW AVENUE
 TORONTO, ONTARIO

Drawing Title
EAST (REAR) ELEVATION

Drawn by:
 ROSELLA GILMOUR
 BCIN:39846
 Qualified "Other Designer"
 meeting requirements of OBC
 Div. C 3.2.5.

Rosella Gilmour

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